

12) Damyanti Verma, wife of Shri Mohan Singh, resident of Katalboh, Tahsil Bemetara, Distt. Durg (C.G.)

13) Chitra Bai wife of Shri Vijendra Singh.
14) Tulsi, daughter of Shri Ravendra Singh, resident of village-Rajkudi, Tah. Bemetara, Distt. Durg (C.G.)

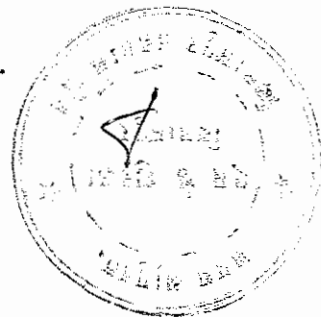
15) Topendra Verma, aged about 22 years, resident of village Rajkudi, Tah. Bemetara, Distt. Durg (C.G.)

16) Chakendra Singh, son of Shri Ravendra Singh, aged about 26 years, resident of village-Rajkudi, Tah. Bemetara. Distt. Durg (Chhattisgarh).

17) Laxmi Verma, daughter of Ravendra Singh, aged about 17 years, minor - through natural guardian mother, Ansuibai, widow of Ravendra Singh, resident of Rajkudi, Tah. Bemetara, Distt. Durg (Chhattisgarh).

18) Kumari Kalpana, daughter of Shri Bhajendra Singh Verma, aged about 13 years, minor-through natural guardian mother Prabha bai, widow of Bhajendra Singh Verma.

19) Umeshwar, son of Bhajendra Singh Verma, aged about 9 years minor - through natural guardian mother Prabhabei widow of Bhajendra Singh Verma.



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Sl.No. 18 and 19 are resident of village-
Rajkudi, Tah. Bemetara, Distt. Durg(CG)

VERSUS

RESPONDENTS R 1) Smt. Keja bai wife of Shri Milan, aged
about 41 years, agriculturist, resident of
Kirki, Tah. Bemetara, Distt. Durg (CG).

R 2) Smt. Bimla Bai wife of Shri Ishwar singh,
aged about 26 years, agriculturist,
resident of Chourenga, Tah. Baloda Bazar,
Distt. Raipur (Chhattisgarh).

R 3) Kamal Singh, son of Shri Gouri Shankar
Kurmi, aged about 25 years.

R 4) Yashwant Singh, son of Shri
Gourishwhankar, aged about 20 years,

R 5) Udal Singh, aged about 16 years, s/o. Shri
Gourishankar.

R 6) Murlidhar, aged about 14 years,

Sl.No. 5 and 6 are minors, through
natural guardian Younger brother Komal
singh, ³⁶⁶ Residents of Chourenga, Tah.
Balondra (Baloda) Bazar, Distt. Raipur.

R 7) Smt. Amin Bai wife of Shri Dharendra
Singh Kurmi, aged about 25 years,
resident of Bera, Tah. Bemetara, Distt.
Durg (Chhattisgarh).



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④

R 8) Smt. Nirmani Bai, wife of Teekam Singh Kurmi, aged about 25 years, r/o. Bemetara, Tah. Bemetara, Distt. Durg.

7 9) Kanhaiya, son of Shri Bhulan Aged about 41 years, agriculturist, village-Tendubhata, Tah. Bemetara, Distt. Durg (Chhattisgarh).

7 10) Malik Ram, son of Shri Bhulan singh, aged about 23 years, agriculturist, resident of village Tendubhata, Tah. Bemetara, Distt. Durg (Chhattisgarh).

R 11) Yashwant singh, son of Shri Bhulan Singh, aged about 23 years, agrkiculturist, resident of village- Tendubhata, Tah. Bemetara, Distt. Durg (Chhattisgarh).

b 12) Smt. Sumitra Bai, wife of Vishram, aged about 38 years, resident of village Saiguna, Tah. Saja, Distt. Durg (Chhattisgarh).

7 13) Urmila Bai, wife of Shri Amrit singh, aged about 37 years, resident of village- Ninwa, Tah. Bemetara, Distt. Durg (C.G.)

x 14) Sahodra Bai wife of Basant singh, aged about 33 years, resident of village Baiji, Tah. Bemetara, distt. Durg (Chhattisgarh).

7 15) Bhulan singh, son of Shri Gopal, aged about 65 years, resident of village-Tendubhata, Tah. Bemetara, Distt. Durg (Chhattisgarh).



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16) Sumitra Bai wife of Shri Onkar Singh, aged about 27 years, resident of village Lolesara, Tah. Bemetara, Distt. Durg (Chhattisgarh).

17) Champabai w/o. Kripa Ram (Dead) L.R.'s

a) Rain singh, son of Shri Kriparam, aged about 47 years resident of village Bhinpuri, PO Bemetara, Distt. Durg (CG).

b) Pratap Singh, son of Shri Kriparam, aged about 44 years, resident of village Bhinpuri, PO Bemetara, Distt. Durg (Chhattisgarh).

c) Bhag singh, aged about 41 years, son of Shri Kriparam, resident of village Bhinpuri, PO Bemetara, Distt. Durg (Chhattisgarh).

d) Ramesh Kumar, son of Shri Kriparam, aged about 39 years, resident of village Bhinpuri, PO Bemetara, Distt. Durg (Chhattisgarh).

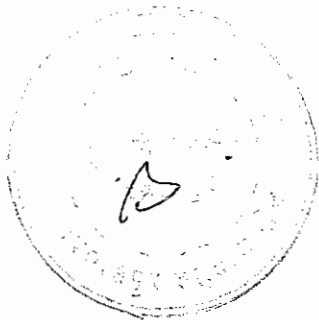
e) Kamdeo, son of Shri Kriparam, aged about 33 years, resident of village Bhinpuri, PO Bemetara, Distt. Durg (Chhattisgarh).

f) Kunjram, son of Shri Kriparam, aged about 30 years, resident of village Bhinpuri, PO Bemetara, Distt. Durg (Chhattisgarh).



P. C. Singh

- g) Sumer singh, son of Shri Kriparam (Dead)
L.R.'s.
- i) Smt. Thagiyabai, wife of Shri Sumer Singh
aged about 40 years, resident of village
Bhinpuri, PO Bemetara, Distt. Durg
(Chhattisgarh).
- ii) Natkeshwar son of Shri summer Singh,
aged about 20 years, resident of village
Bhinpuri, PO Bemetara, Distt. Durg
(Chhattisgarh).
- iii) Kumari Godawari, daughter of Shri Sumer
Singh, aged about 18 years. resident of
village Bhinpuri, PO Bemetara, Distt. Durg
(Chhattisgarh).
- iv) Gulab son of Shri Sumer Singh, aged
about 16 years, minor through : natural
guardian mother Smt. Thagiya Bai.
- h) Smt. Bhuneshwari wife of Shri Basant
aged about 28 years, resident of village
Jiya, PO Jewra, Tah. Bemetara, Distt.
Durg (Chhattisgarh).
- i) Smt. Gayatri, son of Shri Ganesh aged
about 25 years, resident of
village Kenwachhi, PO Chhal, Tah.
Bemetara, Distt. Durg (Chhattisgarh).
- 18) Chandra Bai, wife of Shri Pheru Singh,
aged about 40 years, cultivator, resident of
village-Kirki, Tah. Bemetara, Distt. Durg.



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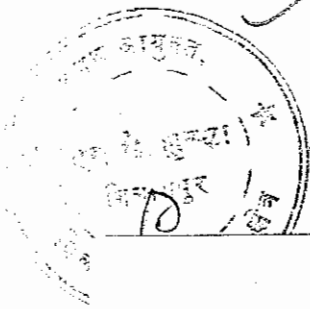
19) Ramendra Singh (dead) through : L.R.'s

- a) Shailendra Kumar, aged about 29 years, s/o. Shri Jalim Singh.
- b) Raghvendra, aged about 32 years, s/o. Shri Jalim Singh.
- c) Arvindra, aged about 28 years, son of Shri Jalim Singh.
- d) Smt. Uttarabai, aged about 22 years, D/o. Shri Jalim Singh,
- e) Smt Damyantinbai, aged about 35 years, wife of Shri Mohan singh.
- f) Smt. Ratna, aged about 26 years, w/o. Shri Pawan Kumar Verma.
- g) Smt. Chittara Bai, aged about 24 years, wife of Shri Vijendra singh.

All are resident of village and post Bera, Tah. Bemetara, Distt. Durg (CG)

20) State of Chhattisgarh, through : Collector Durg (Chhattisgarh).

WRIT PETITION UNDER ARTICLES 227 OF THE CONSTITUTION
OF INDIA.



आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के आदेश आदेश
18-3-2005		
Mr. P.K.C. Tiwari, Senior Advocate with Mr. Shashi Bhushan, Advocate for the petitioners.	Mr. Vimesh Bajpai, Advocate for respondents No.1 to 8.	Mr. Parag Kotecha, Panel Lawyer for the State/respondent No.20.
The petitioners who are defendants before the Court below have questioned the legality and correctness of the order dated 17-9-2002 passed by the Additional District Judge, Bemetara, whereby the learned Additional District Judge rejected the application filed on behalf of the petitioners for examination of one Chandulal Sahu on commission.	Brief facts leading to filing of this writ petition are that Civil Suit No.1- A/84 (new number), which is pending since 1970, was filed by respondents No.1 to 8 herein and their predecessors for declaration, partition, separate possession and redemption of accounts. Written statement of the same has been filed and after framing of the issues, evidence of plaintiffs have also been recorded, and thereafter, most of the evidence of the defendants have also been recorded. During this period, number of revisions/writ petitions have been filed by the petitioners herein from time to time before the High Court. By order dated 5-8-2002, this Court while deciding Civil Revision No.35/2002 passed an order that the petitioners herein are allowed to examine their witnesses which are remained to be examined from the list of witnesses, those witnesses should be examined within one month from today, if the petitioners want any assistance regarding issuance of summon, warrant or Dasti, same may also be allowed, and the parties should co- operate with each other in examining the witnesses so that the suit can be disposed of. However, this was not the end of the problem for the plaintiffs.	

आदेश पत्रक

मामला क्रमांक 43 P. 2164/ सन् 2002

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-2-	
	After order dated 5-8-2002 the petitioners herein filed I.A.No.31 (Annexure P-5) for examination of one witness Chandulal Sahu on commission on the ground that his evidence is necessary in order to prove the adoption deed of Bhojendra Singh and Chandulal Sahu is a person above 70 years of age and bedridden, therefore, his evidence be recorded on commission. The same was objected by respondents No.1 to 8 herein on the ground that such a prayer has already been rejected by that Court by previous order dated 29-1-2002 wherein it was requested that Chandulal Sahu and other witnesses be summoned. Therefore, this application has been filed just to delay the trial, as such, it be rejected. However, the objection raised by counsel for respondents No.1 to 8 impressed the learned trial Judge and he rejected I.A. No.31 observing that the same has been filed just to delay the trial. I have heard learned counsel for the parties. As agreed by learned counsel for the parties, the writ petition is being disposed of at the admission stage itself. Learned Senior Counsel for the petitioners submitted that vide order 5-8-2002, the petitioners herein were allowed to examine all the remaining witnesses, the only condition which was imposed was that the evidence should be closed within one month. In pursuance of that direction, the petitioners herein were producing their evidence. As Chandulal Sahu being the only witness of the adoption deed of Bhojendra Singh, therefore, his examination was necessary and being a bedridden person, it was not possible for the petitioners to bring him to the Court and about his ailing condition, an affidavit in support of the application was also filed, not only the affidavit, even the medical certificate was also filed. Order 26 Rule 1 of the C.P.C. and explanation to the Rule specifically mentions that where the witness is sick or infirm, cannot attend the Court, and a certificate of the	

(पीछे देखिये)

आदेश पत्रक

मामला क्रमांक 2164/सन् 2002

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	registered medical practitioner is filed as evidence of sickness, based on that the learned trial Court ought to have allowed the petitioners to examine Chandulal Sahu on commission by allowing the application. Learned Senior Counsel further submitted that this was being done within the time prescribed by this Court by order dated 5-8-2002. On the other hand, learned counsel for respondents No.1 to 8 submitted that a similar request for summoning Chandulal Sahu was already rejected by the trial Court on prior occasions and this application was filed just to delay the trial. He further submits that this application was filed just two days before the last date of expiry of one month, the petitioners ought to have filed this application earlier, so that the witness could have been examined earlier. Having heard learned counsel for the parties, I have examined the record. It is not disputed that by order dated 5-8-2002 the petitioners herein were allowed to adduce all evidence within a period of one month. However, on last day of one month period, the petitioners herein moved an application for examination of Chandulal Sahu on commission. From perusal of the application, it reveals that Chandulal Sahu is residing 4 kms. away from the Court premises. It is also admitted position that the application was supported by an affidavit in which it was mentioned that Chandulal Sahu is above 70 years of age and he is suffering from ulcer and other diseases, bedridden, and a medical certificate to that effect was also filed with the application. In this connection, the provisions of sub-rule (1) and explanation to sub-rule (1) of Order 26 Rule 1 of the C.P.C. is clear which envisages that where a witness is unable to attend the Court and sick or infirm, then he can be examined on commission. Explanation to this Rule further envisages that	

(पीछे देखिये)

आदेश पत्रक

मामला क्रमांक 2164/ सन् 2002

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	if a medical certificate by a registered medical practitioner is filed as evidence of the sickness, then same be considered for allowing that application without calling the medical practitioner. Therefore, in the circumstances, the learned trial Court ought to have allowed the application, In view of the order dated 5-8-2002 of this Court, even though it was the last date, but the Court could have directed that the witness can be examined on that day because he is residing 4 kms, away from that place. But, unfortunately, that application was rejected on the ground that the defendants are intentionally delaying the proceedings, but unmindful of the result that order ^{AC} ~~which~~ is going to effect the proceedings, the matter is still pending without any progress, and it has been further delayed by more than two years. In the circumstances, I am of the opinion that the impugned order deserves to be quashed being contrary to the provisions of Order 26 Rule 1 of the C.P.C. In the result, the writ petition is allowed. The trial Court is directed to fix a date for examination of Chandulal Sahu on commission with the consent of the parties not later than one month from today. The learned trial Court shall appoint a counsel practicing in that Court whose fees shall be paid by the applicants/defendants. Counsel for the defendants shall ensure that counsel for the plaintiffs is transported to the place of the witness and again brought back to Bemetara, and if on that day the evidence is not recorded on account of lapse of the petitioners herein and defendants before the trial Court, then the trial Court shall be at liberty to pass appropriate order, in accordance with law. The Registry of this Court is directed to transmit a copy of this order along with the record by 21-3-2005 by a special messenger. Counsel for the parties are directed to appear before the trial Court on 28-3-2005 for fixing a	

आदेश पत्रक

मामला क्रमांक

W.P. 2164/

सन्

2002

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	date for recording the evidence of Chandulal Sahu on commission and that should not be beyond more than one month from today. The suit being very old the trial Court should try to dispose of the same expeditiously. In view of this order, M.(W.)P.No.1231/2002, I.A.Nos.6986/2002 and 7254/2003 stand disposed of. Certified copy today.	Sd/- L.C.BHADOO Judge